

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

CRA (DB) No. 25 OF 2025

**Pratap Digal
Vs.
The State of West Bengal and Anr.**

**Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Apurba Sinha Ray**

For the Appellant : Mr. Lord Chatterjee, Adv.
Ms. M. Chakraborty, Adv.

For the de-facto complainant : Mr. Amit Ranjan Pati, Adv.

For the State : Mr. Joydeep Roy, Adv.
Ms. Baishali Chatterjee, Adv.

Reserved on : 17.03.2026

Judgment on : 22.05.2026

Apurba Sinha Ray, J.:-

SECTION- I

Backdrop:

1. Being aggrieved by and dissatisfied with the judgment and conviction dated 19.07.2024 and order of sentence dated 20.07.2024 passed by the learned Additional Special Court-cum- Additional Sessions Judge, 1. Court, Serampore in ST(P) 24(08)/2022 corresponding to regular case Special (P) 04 of 2022 arising out of Serampore Women P.S. case No. 12 of 2022 dated

23.03.2022 under Sections 376 (2)(f) /328/506 IPC and under Section 6 of POCSO Act, the convict-appellant has preferred this appeal on the grounds, inter alia, that the impugned judgment of conviction and order of sentence is not maintainable in the eye of law since the F.I.R. and all other documents, eye witnesses were planted at the instance of his estranged wife and her son to take a revenge against the appellant who obtained a bail order in connection with a proceeding under Section 498A IPC initiated at the instance of his wife.

2. The brief facts of this case are that on 23.03.2022 one Moumita Naskar lodged an FIR before the concerned Women Police Station at Serampore stating that the victim was her sister who was residing with her father at Bombay but as she was tortured by her step mother, her father had brought the victim girl from there and with the help of a person kept her with the accused, a professor of Serampore College, for her education. The father of the victim left the victim girl with the accused about two weeks before 23.03.2022. But after 4 to 5 days, the accused established sexual relation with the victim on several occasions and further he administered medicine to her sister. The accused used to threaten her sister not to disclose anything about such a relationship. The victim girl tried to flee away from there, but she could not succeed. Subsequently, she informed her elder sister i.e. the de-facto complainant, over phone who rescued the victim girl on 23.03.2022 at about 12 noon. The appellant committed rape upon the victim girl, after administering contraceptive medicines to her and kept victim girl in confinement. Moreover, she was also intimidated by the

appellant who committed the offence of aggravated penetrative sexual assault upon the victim. The prosecution adduced as many as seven witnesses and the learned Trial Judge convicted the accused under Sections 376(2)(f)/506 of I.P.C. and Section 6 of POCSO Act and sentenced him to suffer imprisonment for 20 years etc.

SECTION - II

Submission from the Bar:

3. The learned Counsel appearing for the appellant, **Mr. Lord Chatterjee** has submitted that the prosecution case suffers from pervasive contradiction, serious investigative lapses and inherent improbabilities that rendered the conviction unsustainable. Mr. Chatterjee has submitted that there are inconsistencies in the dates of alleged last intercourse. In this regard he has referred to the statement of the victim girl recorded under Section 164 Cr.P.C. and her medico legal examination where she had stated before the concerned doctor a different date as to her last intercourse. There are no specific dates when the alleged intercourse took place between the victim and the appellant. The PW 2, the elder sister of the victim had also failed to specify dates as to when such alleged intercourse took place. PW 2 did not specify when the victim girl was left or sent to the alleged custody of the appellant. No evidence has been adduced to establish that the father of VG ever transferred her custody to the appellant. The prosecution did not

examine the father as a witness at any stage of the trial. The victim's testimony was full of embellishments and omissions.

4. The victim girl's claim that she tried to run away from there but she could not, is not supported by any evidence. The watchman of the college housing compound was not examined. Mr. Chatterjee has further submitted that from the deposition of PWs it is found that there was evidence of pre-planning and concurrence of mind among prosecution witnesses prior to the alleged incident.

5. Mr. Chatterjee has further submitted that medical evidence did not support the prosecution case since no fresh injuries were found in the private parts of the victim despite the allegation that the victim was forcibly ravished on several occasions. The medical report noted "*Old Tear (healed) in hymen,*" "*No visible injury noted on labia/fourchette/vaginal walls, No foreign body found inside vagina*". This medical examination report falsified the victim girl's claim that the sexual intercourse was very painful when the appellant did it with her. No forensic report on vaginal swab was placed for consideration of the learned Trial Court and this omission of a vital piece of scientific evidence gives a fatal blow to the prosecution case and the learned Trial Judge should have drawn adverse inference for such non-production. The medical report of the accused established that appellant was unable to ejaculate during his medical examination. The appellant was suffering from Type I diabetes and as such, according to Mr. Chatterjee, the appellant was

suffering from ejaculatory dysfunction and the same entirely makes the prosecution case unbelievable.

6. The victim being PW 1, according to Mr. Chatterjee, has improved her version during trial.

7. PW 3 Rita Soren (Digal) who is the estranged wife of the appellant is not reliable since in her written complaint under Section 498 A IPC against the present appellant did not mention the nature or conduct of the appellant. She has also improved her version during trial. The evidence of PW 4, Augustine Digal being the son of the accused and PW 3, is wholly unreliable since he had a hostile attitude towards the appellant, akin to his mother. His statement was tutored and motivated.

8. Mr. Chatterjee has further pointed out that there are major discrepancies in recovery sequence and dual seizures. In the complaint of Pw 2, she claimed that she herself rescued the victim at 12 p.m. on 23.03.2002. In the deposition of PW 2, she has stated on the next day she went to Mac House with the Police for recovery of her sister. On the other hand, the IO, PW 7 has stated she did not recover the victim girl. Moreover, she has also deposed that PW 2 did not state before her that on the next day she went to Mac house with police for recovery. This contradiction, according to Mr. Chatterjee, is fatal to the prosecution case. The IO did not collect the CDR and SDR to establish that the victim girl made a telephone call from the phone of her aunt to the mobile phone of Moumita.

9. Mr. Chatterjee has further submitted that the investigating team conducted a seizure from the same premises on two separate dates without any plausible explanation as to the cause of repetition of search and seizure on the second day. The First Seizure occurred on 23.03.2022 at 22:05 hrs., where only the victim's wearing apparels were seized and PW-2 (De-facto Complainant / Elder Sister) figured as one of the seizure witnesses. However, in her deposition before the Trial Court, PW-2 categorically stated she cannot say from which place the wearing apparels were recovered, thereby rendering her own attestation of the seizure list meaningless and raising grave doubt on the authenticity and voluntariness of the recovery process.

10. Mr. Chatterjee has further submitted that the Second Seizure took place five days later on 28.03.2022 at 14:25 hrs. after the accused was arrested and during police custody and from the very same place already raided. At this time, the incriminating articles were bed sheets, Bermuda, victim photos, condom packet, contraceptives, vitamins, etc. Such a seizure was made without the presence of any public witness. Both the witnesses were police personnel in flagrant violation of the mandatory requirement under Section 100 Cr.P.C. that search and seizure be conducted in the presence of two or more respectable inhabitants of the locality.

11. Mr. Chatterjee has further argued that there is no explanation as to why the FIR was lodged after a prolonged delay. There is no proof of the age

of the victim. The birth certificate relied upon by the prosecution is of doubtful nature.

12. Mr. Chatterjee has drawn our attention to the answers given by the accused during his examination under Section 313 Cr.P.C. The appellant had denied all the allegations. He has stated that his wife is the mastermind of the allegations against him. He is innocent and has been falsely implicated on the allegations of his wife. The College formed a Fact Finding Committee which did not find substance in the allegation against him and his wife and her relatives have been removed from the college campus quarter. The Trial Court has overlooked the infirmities in the evidence. The learned Trial Court did not see that the witness list is an incomplete one and the Judicial Magistrate, Darwan, Victim's father, victim's step mother, Ranjit Behera, the aunt, Lora, NGO Sankalpa staff etc. were not examined on behalf of the prosecution.

13. In view of the above, benefit of doubt should be given to the appellant since *it is better to let a guilty person go free than to convict one innocent man.*

14. The learned Counsel for the de-facto complainant, **Mr. Amit Ranjan Pati** has submitted that in cases of POCSO, the Hon'ble Apex Court as well as this High Court, has reiterated that the conviction could be sustained on the basis of the sole testimony of the victim if the evidence of the victim has credence and found to be trustworthy. Minor lacuna or latches on the part

of the investigating officer do not discard the prosecution case. Mr. Pati has further submitted that in the present case, there is nothing on record that the defence has proved with regard to his plea of false implication, i.e. his wife being PW 3 hoisted such a case upon him to damage his moral character. On the other hand, in the cross-examination of PW 4, the defence admitted that the appellant's son stays with PW 3 and on visiting term with the appellant. In support of his contention Mr. Pati has relied upon three judgments i.e. **Raju vs. State of M. P.** reported in **(2008) 15 SCC 133**, **State of Punjab vs. Gurmit Singh** reported in **(1996) 2 SCC 384**, **State of Maharashtra vs. Kewalchand Jain** reported in **(1990) 1 SCC 550**.

15. Mr. Joydeep Roy, learned Counsel appearing for the State, has submitted that the allegation of sexual assault upon students by private tutors should be looked at with utmost sensitivity. The High Court at Calcutta In Re: **Sandip Das -Vs- State of West Bengal reported in 2018 SCC Online Cal 13258: (2018) 4 Cal LT 359** has held that in a case involving sexual assault upon minors and that too by their private tutor, the court is required to look into the evidence of minor victims with utmost sensitivity. It is neither absurd nor improbable when minor victims are subjected to sexual assault by a person in trust, they became so perplexed that they can take time to come out even to their closest ones including parents. The accused in this present case was a person in trust of the VICTIM GIRL who had taken responsibility of her education and upbringing (admitted by the appellant Pratap Digal in his examination under section

313 Cr.P.C. that he has admitted the Victim Girl at National Institute of Open Schooling, New Delhi through Online mode) and has committed penetrative sexual assault and as such it was quite natural for the VICTIM GIRL being perplexed to take time to come out to her closest one who in this present case was her elder sister. It has also been held in the said decision that the Court didn't find any evidence on record apart from mere suggestions which were denied by the prosecution witnesses that there was political enmity between him and PW 6.

16. The learned counsel appearing for the State has further submitted that in the instant case, the wife of the appellant (PW 3) Rita Soren (Digal) has enmity with the appellant and a case u/s 498A of the IPC was pending against the appellant before the JM III, Serampore, Hooghly and appellant's wife has set up the defacto-complainant and the VICTIM GIRL to implicate the appellant Pratap Digal falsely. But in cross-examination of VICTIM GIRL or the de facto-complainant, the defence has not been able to find out any statement from the mouth of these witnesses which would establish any connection between the de facto-complainant and the victim on one side and wife (PW 3) and son (PW 4) of the appellant on the other side. There is no specific suggestion during cross-examination of de facto-complainant that she has instituted this case falsely at the instance of the wife of the appellant. Thus from the evidence on record, motive of false implication by the de facto-complainant or Victim Girl has not been established.

17. It is further submitted that the defence has not been able to rebut the presumption of guilt of the accused established by the prosecution that the appellant has committed aggravated penetrative sexual assault with the VICTIM GIRL by discrediting prosecution witnesses through effective cross-examination or by obtaining the patent absurdities or inherent infirmities in their version by analysis of the specific feature of the case. The defence has failed to prove false implication. The suggestion of false implication has been made in cross examination of prosecution witnesses which has been denied. So, the defence has not been able to rebut the presumption of guilt of the appellant. Hence the prosecution has been able to prove the guilt of the appellant by sufficiently adducing evidence.

18. The learned counsel appearing for the State has also relied upon the following decisions.

**•Sandip Das -Vs- State of West Bengal reported in 2018
SCC Online Cal 13258: (2018) 4 Cal LT 359 (Paragraph
22, 25, 26, 27, 28, 30)**

**•K.P. Kirankumar alias Kiran -Vs- State by Peenya
Police reported in 2025 SCC Online SC 2898
(Paragraph 11)**

SECTION-III

Analysis:

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**Foundational facts Vis-a Vis presumption under section 29 of POCSO Act:*

19. Needless to mention, it has now become law of the land that drawing of presumption under Section 29 of the POCSO Act is not automatic unless and until the foundational facts are established by the prosecution on production of cogent and reliable evidence.

20. In **Sambhubhai Raisangbhai Padhiyar vs. State of Gujarat** reported in **(2025) 2 SCC 399** the Hon'ble Supreme Court has laid down that the presumption under Section 29 is available where the foundational facts exist for commission of offence under Section 5 of the POCSO Act. Similarly, in the recent judgment of **Debraj Dutta vs. State of West Bengal and Another** reported in **2026 SCC Online SC 664** the Hon'ble Supreme Court has been pleased to hold that in the relevant appeal, the High Court applied the presumption arising under Section 29 of the POCSO Act and held that the appellant had failed to discharge the onus that shifted onto him. In that regard, the High Court noted the legal position correctly to the effect that the foundational facts would have to be established by the prosecution to make out a case under Sections 3, 5, 7 or 9 of the POCSO Act, whereupon the onus would shift upon the accused to rebut the said statutory presumption.

21. A learned single Judge of our High Court dilated on the law in respect of the presumption under Section 29 of the POCSO Act. It would be profitable to quote para 24 of the said judgment of **Sahid Hossain Biswas**

vs. State of West Bengal reported in **2017 SCC Online Cal 5023. Para 24**

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“24. Once the foundation of the prosecution case is laid by leading legally admissible evidence, it becomes incumbent on the accused to establish from the evidence on record that he has not committed the offence or to show from the circumstances of a particular case that a man of ordinary prudence would most probably draw an inference of innocence in his favour. The accused may achieve such an end by leading defence evidence or by discrediting prosecution witnesses through effective cross-examination or by exposing the patent absurdities or inherent infirmities in their version by an analysis of the special features of the case. However, the aforesaid statutory presumption cannot be read to mean that the prosecution version is to be treated as gospel truth in every case. The presumption does not take away the essential duty of the Court to analyse the evidence on record in the light of the special features of a particular case, eg. patent absurdities or inherent infirmities in the prosecution version or existence of entrenched enmity between the accused and the victim giving rise to an irresistible inference of falsehood in the prosecution case while determining whether the accused has discharged his onus and established his innocence in the given facts of a case. To hold otherwise, would compel the Court to

mechanically accept the mere ipse dixit of the prosecution and give a stamp of judicial approval to every prosecution, howsoever, patently absurd or inherently improbable it may be.”

22. In the judgment of **Bhanei Prasad vs. State of Himachal Pradesh** reported in **2025 SCC OnLine SC 1636**, the Hon’ble Supreme Court has also observed that Section 29 of the POCSO Act creates a statutory presumption of guilt, once foundational facts are established.

23. Therefore, it is the duty of the prosecution to establish foundational facts before the learned Trial Court for raising a presumption of reverse burden upon the accused. In the case at hand, if we go through the judgment of the learned Trial Court we shall find that the learned Trial Judge has quoted the excerpts of the depositions of the victim girl (PW 1), the de-facto complainant (PW 2), Rita Soren (Digal) (PW 3), Augusten Digal (PW 4), Dr. Partha Chatterjee (PW 5), Dr. Abhijit Roy (PW 6) and Investigating Officer Nibedita Koley (PW 7) and thereafter has straightway come to the conclusion that the prosecution has been able to establish foundational facts and as such it is presumed in view of Section 29 of the POCSO Act that the accused has committed the offence of aggravated penetrative sexual assault upon the victim girl. For the purpose of understanding, the relevant paragraph 17 of the judgment is quoted hereinbelow:

“17. From evidence of victim girl and other prosecution witnesses on record, it is proved that the prosecution has been able to establish foundational facts and as such it is

presumed in view of section 29 of POCSO Act that the accused has committed the offence of aggravated penetrative sexual assault upon the victim girl. Now, burden of proof shifts upon the defence to rebut the presumption of guilt of accused, drawn in favour of the prosecution on the basis of foundational facts established by the prosecution witnesses. The defence has opportunity to do so by leading defence evidence or by discrediting prosecution witnesses through effective cross-examination or by obtaining the patent absurdities or inherent infirmities in their version by analysis of the specific feature of the case.”

24. From the above it transpires that no effort was made by the learned Trial Judge to analyse the evidence of the above PWs and also to see whether such evidence is free from blemishes and anomalies.

25. Although the learned Trial Judge in subsequent paragraphs had dealt with the failure of the accused to discharge his onus that he did not commit the offence under Section 5 of the POCSO Act, it has now become a bounden duty of this Bench to see whether foundational facts exist in favour of the prosecution case, in view of the judgments referred to above.

26. It appears from the records that on 23.03.2022 at 8.45 P.M. the de-facto complainant lodged an FIR stating that her sister aged about 16 years and above was residing with her father in Mumbai but as her step-mother used to inflict torture upon her sister, her father brought the victim (her sister) from Mumbai and left her with the appellant professor, Pratap Digal of Mac House, Serampore College, P.O. - Serampore, Hooghly for her

education. After 4 to 5 days on the pretext of cuddling, the appellant established physical relation with the victim on several occasions and thereafter he also administered medicine upon her. The victim was also threatened so that she did not disclose such incidents to anybody. The victim tried to escape on several occasions but in vain. Thereafter, the victim secretly called her over the phone and thereafter on 23.03.2022 around 12 noon the de-facto complainant rescued her sister from there. The de-facto complainant requested for a legal action against the appellant so that he was appropriately punished. After receiving the said complaint, the Serampore P.S. case No. 12 of 2022 dated 23.03.2022 was started and after drawing a formal FIR the officer-in-charge of women Police Station, Serampore-Chandannagar Commissionerate herself took up the investigation and went to the place of occurrence at Mac House, Serampore College around 10.05 P.M. and in presence of the de-facto complainant and one Sourav Dey and one lady constable Nitu Bhakta Banerjee, two wearing apparels of VG were recovered and seized as Alamats. The VG was produced before the Doctor at Serampore Walsh SD Hospital for medical examination and the doctor Partha Chatterjee examined the victim on 24.03.2022 at 1.25 am. The doctor recorded the history of the assault as follows:

“Allegedly she was sexually assaulted by Pratap Digal from Serampore College, Mac House, last intercourse time on 21.03.2022”. The patient was conscious. It is also recorded that the de-facto complainant gave consent for the medical examination of her sister. It is recorded that the patient has normal breast configuration. No visible injury was found in the labia. No active injury in fourchette. It is also noted that there was no visible injury on

the vaginal walls. So far as regards the hymen, the doctor noted an old tear (healed). No such injury in other parts of the body. No foreign body was found inside the vagina. It is also noted in the medical report that there was no evidence of any physical injury at the time of examination of the private parts and/or any other part of the body and also no evidence of any foreign body was found inside vagina. The vaginal swab and smear was taken and handed over to the concerned lady constable. It is also recorded by the Doctor that the patient did not wear the same undergarments which she was with during the act. The victim was produced before the Judicial Magistrate for recording her statement under Section 164 Cr.P.C. and the learned Judicial Magistrate, 2nd Court, Serampore, Hooghly has recorded the statement of the victim after complying with all legal formalities. In her statement the victim stated that she was residing in the professors' quarters in Mac House. Her father left her there 2 weeks ago. After 2 or 3 days the appellant established physical relation with her. She was threatened and was physically assaulted. He made such an act lastly 4 days ago. She called her elder sister secretly over the phone and disclosed everything to her. She suffered pain during such an act. Her sister brought her out from there and took her to P.S. Pratap Digal used to administer medicine upon her. He continued physical relations even during her periods. He used to make such physical relations by force. She tried to escape but failed.

**Testimony of the Victim girl : does it inspire confidence ?*

27. The question is whether the testimony of the victim inspires confidence or not.

28. In her deposition before the learned Trial Court, the victim being PW 1 has stated that her stepmother did not take care of her properly and she used to torture her. There was a church near her house and she used to visit the church. The Father at the Church was Ranjit Behara who had a friendship with the appellant Pratap Digal. She informed her problems to the Father of the Church who informed the fact of her problems to Pratap Digal. He told her father that he would keep her in his house and he would make arrangements for her education. Her father agreed to his proposal and he took her to the house of the accused at Mac House situated near the campus of Serampore College. Mac House is the quarter of professors of Serampore College. From the second week of March, 2022, she started residing in the house of the appellant who used to reside there with his niece namely Lora. The said quarter consisted of two bedrooms. She and Lora used to reside together in a room whereas Pratap Digal used to reside in the other room. At times, girls of her age used to come and stay in the night and after spending the night they used to leave. The son of the appellant, namely Augustin used to visit his quarter but he did not stay in the night. After one week of her residing in the quarter of accused, the accused came from college in the afternoon when his niece Lora was not in the quarter. The victim was alone at that time. Pratap Digal called her and asked her to sit beside him. Thereafter he made bad touches over her body, which did not look good to her. She became frightened and went inside the room. After about one hour, the accused was sleeping in his room after shutting off TV. When she went to the appellant to enquire whether she should serve lunch to him, he caught hold of her and thereafter undressed

her and forcibly raped her. The appellant compelled her to massage his body and while doing so he used to rape her forcibly on several occasions. It is also deposed by her that during such acts she used to suffer severe pain and she became mentally upset. He forcibly committed rape upon her even during her menstrual cycle. The appellant used to administer medicine to her. She tried to flee away from that place but she could not do so. Subsequently she informed her elder sister about the facts over phone and then her elder sister brought her out from the custody of the accused on 23.03.2022. From there she was taken to Serampore Women PS and the complaint was lodged. Police recorded her statement. Her medico legal examination was done on the same night at Serampore Walsh SD Hospital. Thereafter, she made a statement before the learned Judicial Magistrate.

29. In her cross-examination, she has stated that she obtained a mobile from one aunt to whom the accused provided a job in his school and has given a place for her to reside. On 21.03.2021, she informed the incident to her and she helped her by providing her mobile to call her elder sister. On 21.03.2021, she was sent to the school in which said aunt was having a job to stay there and to study in the school. The daughter of the said aunt was also admitted in the said school and she was shifted there, because it would be convenient for both of them to go to the school together. She has also admitted in his cross-examination that she applied for distance education at Delhi and in which her address was given as a place of Rajarhat. In her said address she had mentioned herself as under the care of Ranjit Behara. She has further deposed that in her cross-examination that before entering into Mac House, there is a door on which a register is maintained which contains

records of persons entering into Mac house. The quarter of the accused is situated in the ground floor and there are adjacent quarters of other professors of Serampore College. During her stay at Mac house she had talked with her elder sister on one or two occasions using the phone of the other girl who resided with her namely Lora. Lora used to reside with her in the said quarter regularly. PW 1 has further stated in her cross-examination that it is not a fact that the son and wife of the accused used to visit the said quarter from time to time. She has further stated that in addition to themselves, several girls used to come and reside in the said quarter during the night. She has denied the suggestion that the entire case is a false case or that she has been planted for filing this false case against the appellant by the son and wife of the appellant. She has further denied that the de-facto complainant was set up by the son and daughter of the appellant and as such she has acted on their behalf.

* *Is such testimony of the victim sufficient to convict the appellant?*

30. The above testimony of the Victim does not by itself inspire confidence on several counts.

Firstly, her alleged presence and stay at the Mac House under Serampore College with the appellant is not proved by cogent and independent evidence. From the victim's deposition, it is found that Mr. Ranajit Behera, Father at the Church was aware of the problem of the Victim and he informed the matter to the appellant who came to church and after knowing the problem latter agreed to keep her in his quarters at Mac

House and subsequently, the father of the victim took her to Mac House. The father of the victim Mr. Behera was a vital witness to prove the alleged fact, but the I.O did not make any effort to examine and cite him as a witness. The I.O did not take the trouble to examine other professors, academicians whose residential quarters were adjacent to the quarter of the appellant for the reasons, again, best known to the I.O. Serampore College is on the opposite side of the Mac House, and it is very difficult to believe that if the appellant had the habit of bringing girls, not related to him, from outside of the campus since 2012 or prior to that period, the authority at Serampore College or his neighbouring colleague professors will permit/allow him to do so for so many years, particularly when Mac House was a gated community with security guard having entry register for any person who wanted to enter the compound. The victim in her cross examination has admitted that *“before entering into Mac House, there is a door on which a register is maintained, which contains records of persons entering into Mac House.”* Therefore, the fact that the father of the victim took her to Mac house for keeping her in the custody of the appellant could have been proved by way of producing the relevant register. The competence and efficiency of the I.O. Sub-Inspector Nibedita Koley was so much so that she did not think it fit to seize the said register from the Authority or the Gate-Keeper at the commencement of her investigation. Had the said register been seized, it would have shown the entry of the victim along with her father on the relevant date and time in the Mac House. Moreover, it may have shown the entry of other girls, if any, who used to visit the quarters of the appellant from time to time, and sometimes they used to stay at night,

as alleged by the Victim. But the IO did not seize the said entry register. When the authority keeps gated security with an entry register, it is clear that the entry in the compound is restricted and entry of any outsider is to be recorded in the register. This document of enormous importance was not seized and brought to the notice of the court by the I.O.

Secondly, seizure of wearing apparels of the victim allegedly from the quarters of the Appellant in his absence and not in presence of any local respectable witness also casts a serious doubt. Soon after lodgement of the FIR, the quarter of the appellant was allegedly searched in the absence of the appellant by the IO who was the then OC, Women PS, Serampore, and two sets of wearing apparels were recovered from there in presence of the Victim, one lady constable Nitu Bhakta Banerjee, de facto complainant, her would-be husband (as per IO, being PW7) who hailed from Uttarpara, which is not very close to Serampore, around 22.05 hours on 23/03/2022. Although the said witness from Uttarpara was allowed to be the alleged independent witness, the IO did not cite any local respectable person as an independent witness to such a seizure list. The IO could not say how she opened the door or the lock of the appellant's quarter in his absence. In all probability, there might be any person inside the quarter who opened the door and if that be so, then why he or she was not cited as a witness to the relevant seizure list. The records show that the said alleged independent witness Sourav Dey and his friend Mr. Dugar (CSW Nos. 3 & 4) were not only not produced during trial; they were not even summoned by the learned Public Prosecutor. It is also astonishing that the lady constable

Nitu Bhakta Banerjee was not even cited as C.S witness. The register from the gate was also not seized to fortify that the police raided the Mac House on 23.03.2022 at 10.05 P.M. The said wearing apparels were neither sent to forensic science laboratory nor were the same produced during trial for identification by PW 1 and perusal of the Court. It appears that all the seizure lists were marked exhibits through the I.O as she was the maker of such seizure lists but the witnesses to such seizure lists excepting de-facto complainant were not even summoned. Marking of documents as exhibits can be done during trial but the evidentiary value is to be weighed by the trial judge at the time of writing judgment. It appears that the evidentiary value of the seizure list dated 23.03.2022 was not properly assessed by the learned Trial Judge. The veracity of the said seizure list is doubtful.

Thirdly, the victim's fruitless attempt to flee away from Mac House is not supported by any evidence. The victim and her elder sister, PW2 had consistently alleged that the victim tried to flee away from Mac House, but failed. The deposition of PW2 claimed that she rescued the victim from Mac House. There is no witness to such a rescue process by the Pw2. If the victim was in confinement, then, how could she go outside Mac house on 21.03.2022 and seek help from one aunt for using her mobile to call PW2. It demolishes the Prosecution case that the victim was kept in confinement. No effort was made by the IO to ascertain the whereabouts of the said 'Aunt' of the victim, and examine her under section 161 Cr.P.C. Moreover, the Victim had admitted that she had access to the mobiles of other girls during her alleged stay in Mac house. The phone of PW 2 could have been examined by

the IO but the same was not done in this regard. Moreover, the IO has admitted that the father of the victim came to PS but the IO did not examine him nor cite him as a witness in the Charge sheet.

Fourthly, IO's excessive reliance upon the estranged wife and son of the appellant. It is very unfortunate that without examining the neighbouring professors or colleagues residing in the next door or adjacent quarters, the IO thought that the estranged wife and son of the appellant would be the perfect witnesses to grill the appellant, who is a professor of Serampore College. Now, the question is how she got the information about the wife and son of the appellant. Was there any prior acquaintance with each other or was the IO aware that a criminal case under section 498A IPC was pending against the appellant at the instance of his wife? What were the reasons for making the estranged wife and son as star witnesses for the Prosecution, particularly when the IO had sufficient opportunity to get other vital witnesses from the place of occurrence or its vicinity? Was the IO influenced by anybody? Then, why did she not try to talk with the authority of Serampore College? Why no effort was taken by the IO to ascertain the particulars of the girls who were allegedly called by the appellant in Mac House regularly and to examine them? All these questions are arising only because of the fact that the IO, for the reasons best known to her, has heavily relied only upon the estranged wife and son, without bringing on record any material showing that she had tried to ascertain the fact from other non-interested respectable witnesses.

**Need for corroboration of Victim's testimony:*

31. As the testimony of the victim does not inspire confidence, we have to look into other materials on record to ascertain whether the testimony of the victim is corroborated or not.

Medical Evidence-

- The victim was medically examined on 24.03.2022 at 1.25 a.m. at Serampore Walsh Hospital. After examination the doctor recorded that there was no visible injury in the labia. No active injury was found in fourchette. No visible injury was found on the vaginal walls. It is also recorded that there was no injury in other parts of the body. It is also observed that there was an old tear (healed) in hymen. No foreign body was found inside the vagina. The said medical report further discloses that there was no evidence of any physical injury at the moment of examination on the private parts and/or any other parts of the body and there was also no evidence of any foreign body inside vagina of the victim. It is also recorded in the said medical report that “conclusion pending for the report of vaginal swab examination/forensic examination.” The said medical report has further disclosed that vaginal swab was taken and handed over to lady constable 1570 Nitu Bhakta Banerjee.
- PW 5 Dr. Partha Chatterjee who examined the victim girl on 24.03.2022 at 1.25 a.m. has deposed that during medico-legal examination of the victim, he did not find any visible injury on

the external part of the body of the victim neither there was any active injury. However, he found one old tear (healed) of hymen. He also did not find any foreign body in the private part of the victim. During her such examination he collected the vaginal swab of the victim girl and handed over the same to lady constable Nitu Bhakta Banerjee. He has further stated in the examination-in-chief that in case of any injury on the private part of a woman, it takes 48 hours to 72 hours to heal. In order to ascertain active injury in the private part of a woman, examination must be made within 24 hours, however, it takes 28 days to completely heal any injury in the private part. From his observations in the report it is found that there was an old tear (healed) of hymen, and according to PW 5, it cannot be discarded that there was sexual assault with the victim. In his cross-examination he stated that he did not take any sample for DNA profile, since there was no such column in the proforma of medico-legal examination report. In his report the duration of examination has not been mentioned.

- From the medical report which has been marked as Exhibit P 4/1 it appears that there was no injury on the private part of the victim including vaginal wall and other private parts excepting an old tear which was already healed. The said report discloses that as per version of the victim the last intercourse took place on 21.03.2022. Therefore, according to the prosecution, as the medical examination took place on

24.03.2022 at 1.25 a.m., the injury of the victim was healed. However, if we go through the deposition of PW 1 we shall find that she alleged time and again that the appellant forcibly committed sexual intercourse with her on several days and she suffered severe pain in her private parts. If that be so, there must be some visible injury on the private parts since the deposition of PW 5 is very much relevant in this regard. The doctor has stated that "it takes 28 days in completely healing of any injury in the private part." The nature of the alleged forceful sexual exploitation upon the victim, if any, would certainly indicate or disclose some visible injuries in private parts of the victim. It is not clear from the deposition of PW 1 regarding the exact date and time when such last intercourse took place. If we peruse the deposition of PW 1 once again we shall find that a diametrically opposite statement was given by the victim in her cross-examination. She has stated that she used the mobile phone of one aunt to whom the accused provided a job in his school and has given a place for her to reside. On 21.03.2022 she informed the incident to her and she helped her by providing her mobile to call her elder sister. On 21.03.2022 she was sent to the school in which the said aunt was having a job to stay there and to study in the school. The daughter of the aunt was also admitted in the said school and she was shifted there because it would be convenient for both of them to go to the school together. This goes to show that on 21.03.2022 she

was sent to one school and on that day she informed her elder sister the incident of sexual aggression using the phone of her aunt as alleged. The time was not mentioned. It is also deposed that the daughter of the said aunt was admitted in the said school and the victim was shifted there. PW 2, the elder sister of the victim has also stated that on 21.03.2022, PW 1 went to a school. Therefore, it goes to show that the said school which was referred to by the PW 1 and PW 2 in all probability was a morning/ day school. If, in the morning of 21.03.2022 she informed her elder sister of sexual assault at the instance of the appellant over mobile phone, a question arises as to when such alleged sexual offence was actually committed by the appellant. Then, certainly the same was done before her attending school on 21.03.2022, but the prosecution did not lead any evidence in this regard. If the elder sister was informed on 21.03.2022 over telephone then, it is also not clear as to why she did not come immediately thereafter, but there was no evidence at all.

- PW 2, the elder sister of the victim has stated in her deposition as well as in the FIR that she rescued the victim girl on 23.03.2022. No evidence was collected by the IO to show that the victim informed her elder sister on 21.03.2022 over a mobile phone. PW 2 has further stated that she rescued PW 1 from Mac house on 23.03.2022. If that be so, then it is difficult to believe that PW 1 is telling the truth to the effect that she informed her elder sister over phone given to her by her alleged aunt on

21.03.2022 and on that day she was sent to one school for studying and staying there. PW 2 has also stated in her cross-examination that on 21.03.2022 the victim went to a school at Shimla but she does not know whether the name of the said school is William Carey Memorial School or not. This evidence falsifies the claims of the prosecution that firstly, the victim was kept in confinement in the quarter of the appellant; secondly, although PW 1 tried to escape from Mac house but she could not; thirdly, she was rescued from Mac House on 23.03.2022 at 12 noon. Therefore, the prosecution has failed to clear doubts that when the victim had sexual intercourse with the appellant lastly on 21.03.2022, and the matter was informed to her elder sister on 21.03.2022, then as to why she was produced before the concerned medical officer on 24.03.2022 at 1.25 a.m., particularly when PW 2 claimed that the victim was rescued by her on 23.03.2022 at 12 noon. The FIR was lodged at 8.45 P.M. Then why was there so much delay in filing the FIR even after her alleged rescue at about 12 noon on that day? The prosecution has failed to clear the confusion. Had the PW 2 brought the victim to the police station immediately after her recovery on 23.03.2022 around 12 noon, the victim could have been examined within 48 hours or soon thereafter. There is no acceptable explanation received from the prosecution in this regard. As PW 1 claimed that she was subjected to forcible sexual act at the instance of the appellant on several days it is

unlikely that there will not be any injury marks in the victim's private parts. It is clear that a complete healing of injuries in the private parts for such a forcible act takes at least 28 days. The medical report was not conclusive in the sense to conclude that whether there was any sexual act or not at the relevant point of time, the doctor kept his decision pending receipt of the forensic examination report.

Vaginal swabs collected but not sent for forensic examination

- It appears from the record that Dr. Partha Chatterjee, being PW 5, deposed that after examination, he collected vaginal swab of the victim and handed it over to one lady constable Nitu Bhakta Banerjee who signed the said medical report as recipient. The Seizure list (Ext. P-14) of vaginal swab was prepared by the concerned IO but unfortunately, it appears that the IO Nibedita Koley did not send such vaginal swab of the victim to forensic examination. It is peculiar that in spite of the collection and seizure of the vaginal swab of the victim the same was not sent for chemical examination. The medical report has clearly stated that "conclusion pending for the report of vaginal swab examination/forensic examination." If that be so it is not clear as to why the IO did not send such swabs for chemical examination. Such a chemical examination was very much important since the concerned doctor did not find any physical injury in the private parts or any other

parts of the body of the victim in spite of the allegation that she was subjected to forcible intercourse on several days and also that there was no evidence of any foreign body inside her vagina. The IO did not produce the seizure list witness Moumita Dey and Bandana Banerjee to strengthen the evidentiary value of the seizure list being exhibit no. P 14. In her examination Nibedita Koley has stated that she prepared the said seizure list of vaginal swabs but neither Moumita Dey nor Bandana Banerjee nor Nitu Bhakta Banerjee were produced during trial. The chargesheet shows that Nitu Bhakta Banerjee and Bandana Banerjee were not even cited as chargesheet witnesses.

Veracity of the Seizure list of contraceptive tablets, wearing apparels bed sheets etc. of the appellant:-

- The records show that the appellant was taken into police custody for 4 days after complying with legal formalities. On 29.03.2022 the appellant was produced before the Court after completion of his police custody by a forwarding letter from the IO S.I. Nibedita Koley. She has specifically stated in the said letter that *“On 28.03.22 as per leading to the confessional statement of PC accused I held a raid at Mack House Serampore College, Quarter no. 10, PO & PS-Serampore, Hooghly and recovered i) One Blue coloured white & Pink colour printed bed sheet along with same coloured printed pillow cover) One white coloured printed bed sheet, iii) One beep blue &*

white printed half pant (Barmunda), iv) Six copy of passport size photo of victim girl, v) One packet Super Manforce condom, vi) One packet Levonorgestrel Tablets IP Unwanted 72, vii) One packet Ginseng Multivitamin & Multimineral Softgel Capsule REJUV accordingly I seized the same under proper seizure list.”

- From the above it is found the appellant has made one confessional statement before the IO and as per his leading statement certain articles were recovered from Mac house, Serampore College Quarter No. 10, Serampore, Hooghly. Although the IO has claimed that there was a disclosure statement under Section 27 of the Evidence Act but such disclosure statement was not produced before the Court nor was marked as exhibit. Without such disclosure statement being produced and proved the IO had deposed that she went to the quarter of the appellant and recovered bed sheets, pillow cover, Bermuda pant, 6 copies of passport size photo of the victim girl, super manforce condom, contraceptive tablets, vitamin tablet etc. in presence of only two lady constables_Moumita Dey and Mamoni Ghosh on 28.03.2022 at about 14.25 hours. At that time also the IO did not take the assistance of any local respectable witness, rather she relied upon her two colleagues namely Moumita Dey and Mamoni Ghosh as the seizure list witnesses. Most interestingly, although the said Moumita Dey and Mamoni Ghosh were cited as chargesheet witnesses as CSW No. 9 and 10, they were not even summoned to appear before the Court to prove the said seizure list. Therefore, neither any disclosure statement under

Section 27 of the Evidence Act was proved nor was the seizure list dated 28.03.2022 proved by producing the lady police constables who acted as seizure list witnesses. There is no reason that when such seizure had taken place in broad daylight around 2.25 P.M., then why the I.O did not take any steps to seize such articles in presence of any local respectable witnesses, particularly when the quarters of other professors were adjacent to the quarter of the appellant and the Senate Hall of the Serampore College or the Serampore College itself was at a stone-throw distance ? The veracity of this seizure list dated 28.03.2022 is also very doubtful.

- It is further astonishing that during trial neither the wearing apparels of the victim nor the wearing apparels and bed sheets etc. nor the contraceptive tablets and condoms etc. were produced before the learned Trial Court and marked as material exhibits. When such seizure lists are doubtful, and when there was no disclosure statement under Section 27 of the Evidence Act proved in accordance with law, production of such materials before the learned trial court was very much important to show that the appellant was not falsely implicated in the case as alleged by the defence.
- Therefore, there is serious lacuna in the prosecution evidence and the learned Trial Judge did not consider such lacuna in proper perspective. In my view, the foundational facts have not been established by the prosecution up to the expectation and principles laid down by the judiciary. There is no reason as to why such

seizure witnesses were not produced before the Court. Some of them were not even summoned to appear and support the prosecution case.

*Relation between the 'Star witnesses' and the appellant: Evidentiary value of their testimony :

32. The prosecution has relied upon only two star witnesses namely Rita Soren (Digal) and Augustine Digal. From the record it transpires that the relation between the appellant and his wife Rita Soren (Digal) being PW 3 and son Augustine Digal being PW 4 were very strained due to the fact that PW 3 initiated one criminal case against the appellant under Section 498 A IPC in the year 2012 and since then PW 3 and her son were living separately although within the jurisdiction of Serampore Police Station. PW 3 has stated on oath as follows:-

"I know Pratap Digal who is my husband. Our marriage took place on 22.04.2002 by way of registration. He is present in court (identified).

After the marriage, I used to reside with my husband at his quarter situated at Serampore Mac House. Mac House is the name of quarters of Serampore College meant for teaching staffs. He is Lecturer in Theology Department of Serampore College with History subject. At that time I used to work as Library Assistant in Theology Department of Serampore College. Before marriage I used to reside in the quarter of Serampore college. After the marriage I was not residing happily with him as he used to assault me without any reason. I have a son with accused who was born on 05.06.2003 and his name is Augustin Digal. After the birth of child my husband brought a cook from Odissa being a maidservant aged about 14-15 years. He got his body massaged by the said child during the night and when I used to oppose this act, he used to assault me. He used to

keep such maid for 5-6 months and thereafter, he used to send the said maid back and used to bring new maid. The first maid while residing at Mac House, became pregnant and my husband gave his marriage with his bhagna. On 07.03.2012 accused mercilessly assaulted me in the night as I protested his illegal acts. I thereafter lodged a case under section 498A of I.P.C. against my husband. After the incident I used to reside with my mother at Serampore College quarter. Probably since year 2017, as my son used to meet the accused in Serampore Quarter, he started visiting his quarter at Mac House. In the month of August, 2021, I came to know from my son that my husband would bring some girls for the purpose of their education. Subsequently three girls were brought and out of them one was resident of Mahesh. These girls used to reside in the quarter of my husband at Mac House. Since then I asked my son not to stay in my husband's quarter during night. On 23.03.2022, darwan made a telephone call to us and informed us that my husband has been arrested and taken away. Thereafter, my son went to Serampore Women P.S. and found that my husband has been arrested in a rape case. He also came to know that one girl having white hairs and white colour had been raped. My son had seen the said girl in the quarter of my husband at Mac House during the day time when he used to visit the said quarter. My husband used to run an N.G.O. namely Diasquora Global Ministry and he has a school namely William Carey Memorial School. He has also F.C.R which is used for encashing the foreign currency. I do not remember the date when police interrogated me. Probably it was 5-6 days after the incident. I cannot say the exact date. After ten to twelve days after institution of the case, I made statement in court and I stated the above facts before the court. The Magistrate recorded my statement and thereafter obtained my signature over the statement.”

32.1. In her cross-examination she stated that she had a love affair with the appellant for 7 years before the date of marriage, that is, since the year 1995. Her husband did not help her in getting service in Serampore College. Since the year 2000 she has been in service at different places in different organisations. She was presently working as a clerk at Baidyabati Municipality. On 08.03.2012 she lodged a complaint with the police station under Section 498- A IPC against the present appellant. The

scribe of the said complaint was her maternal younger sister namely Sucharita Behara. She signed the said complaint after understanding the contents of the same. She further deposed that on 07.03.2012 at 10.30 P.M. when she was assaulted, her brother David Behara recovered her from Mac House and took her to Serampore Walsh Hospital where she was medically examined and subsequently admitted in the hospital. The distance of Mac house from her mother's quarter is two minutes walking distance. In her mother's quarter her elder sister Ashalata Karkata, herself and her mother Sukeshini Soren used to reside. Her elder sister expired but her husband used to reside with them. She purchased a flat in the year 2017 where she was presently residing. The said flat was in the name of PW 3 and her elder sister Ashalata. She subsequently stated in her cross-examination that in the complaint under Section 498 A IPC against the appellant, she did not mention about keeping of maid servant, massaging of appellant's body during the night, pregnancy of maid servant and arrangement of her marriage with his Bhagna. However, PW 3 volunteered that she was not aware that these facts had to be stated. Her son was minor and she did not get the courage to state these facts. She had seen the accused with her own eyes but she did not incorporate the same in the complaint because she did not have any proof of the same. She had denied that she deposed before the Court as a matter of revenge being tutored by her family members so that her husband may fall in deep trouble. However, PW 3 has admitted that she had stated before the learned Judicial Magistrate recording her statement under section 164 Cr. P.C that on that day she came from the police station.

32.2. From the above deposition it appears that PW 3 is the estranged wife of the appellant and the relation between her and the appellant was very strained. It is also found that one case under Section 498-A IPC was initiated at the instance of PW 3 and the appellant was arrested in connection with the said case and was granted bail subsequently. Although, PW 3 did not mention in her written complaint under Section 498 A IPC regarding the nature and behaviour of the appellant akin to her deposition in this case that he used to bring girls, maid servants and compelled them to massage his body and one maid servant became pregnant at his instance, and such maid servant was given marriage to one of the relatives of the appellants etc., she has stated on oath before the Court in the present case regarding alleged nature of the appellant. She had volunteered that she did not have the courage to state those facts in her complaint under Section 498A IPC and, as her son was minor she did not state such facts in her written complaint although she witnessed all those incidents. Such statements are not believable on the ground that PW 3 was not alone in Serampore. In fact, at the relevant point of time her mother, brother, elder sister and her husband, maternal younger sisters were all in Serampore and some of them were in the college compound of the Serampore college (PW4). If she was surrounded and assisted by so many relatives it is difficult to believe that she did not have the courage to state those facts in her complaint. The allegations regarding the nature of the appellant as stated by PW 3 are very serious. According to her, the appellant brought a girl aged about 14 to 15 years and he got his body massaged by the said child during the night and when she used to oppose

this act the appellant used to assault her. The appellant used to keep such a maid for 5 to 6 months and thereafter he used to send the said maid back and used to bring a new maid. The first maid while residing at Mac house became pregnant and the appellant gave her marriage with his bhagna on 07.03.2012. The appellant assaulted her in the night as she protested his illegal acts. She thereafter lodged a case under Section 498 A IPC against the appellant. If that be so, is it believable that PW 3 had refrained from stating such facts in the FIR against the appellant although she protested his alleged illegal acts? **No self-respecting working woman would tolerate such an adulterous life of her husband.** Her version that she did not have any courage to state such facts has no basis since her close relatives were living at a stone throw distance. Moreover, PW 3 has also deposed that her son being PW 4 went to Serampore Women Police Station on 23.03.2022 and found that her husband was arrested in a rape case. Her son also came to know that one girl having white hairs and white coloured had been raped. Her son had seen the said girl in the quarter of her husband at Mac house during the day time when he used to visit the said quarter. The IO has stated in her cross-examination that **PW 3 Rita Soren has not stated before her that her son had seen the said girl in the quarter of her husband at Mac house during the day time when he used to visit the said quarter.** The appellant in his examination under Section 313 Cr.P.C. has stated (question and answer no. 22) that his son never visited him since March, 2012 after the case under Section 498 A of IPC was registered against him. Therefore, PW 3 has improved the prosecution case. Is it believable

that no other local person in the surroundings of Mac house but the son of the estranged wife saw the girl in the quarter of the appellant, with whom he had no visiting terms or vice versa? At least there is no evidence to that effect, excepting the deposition of the Victim who, although failed to identify the particulars of other girls who allegedly used to stay at night in the quarter of the appellant, has clearly named and given the particulars of PW4. It appears that the I.O., without examining any available local witness in or around Mac House, has relied upon the deposition of the estranged wife and her son with an oblique motive. It is very strange that to prove the presence of the victim at Mac house the I.O. has relied upon no other witness but only upon the estranged wife and her son.

33. PW 4 Augustine Digal has deposed as hereunder:-

“Pratap Digal is my father and Rita Soren is my mother. In the year 2012 a case under section 498A I.P.C. occurred between my parents and since then they are residing separately. I used to reside with my mother and I used to visit my father. My used to reside in Mac House quarter meant for professors of Serampore College. Mac House is situated inside the campus of Serampore College. Previously my mother also used to reside in staff quarter of Serampore Collège but at present she is residing outside. Since 2017 I used to go to the quarter of my father and used to accompany him wherever he used to go. In year 2020 my father met with an accident by motorbike and at that time I resided in his quarter for few days. After the completion of lock down in year 2020, I noticed that my father brought 3 to 4 girls for the purpose of education. They used to massage the body of my father, they used to cook food and used to clean the house. Sometime I have seen my father catching hold of them and pushing and pulling them and it looked odd to me and I asked my father not to do so. When I protested his such acts, my father became angry and asked me not to come to the quarter and to reside with my mother.”

In year 2021 from October or November, I got admitted in Serampore college and at that time I used to visit quarter of my father for having lunch. About two weeks ago of institution of this case, i.e. in the month of March, 2022, I had seen a girl in his quarter with very fair complexion. The said girl was aged about 16 years and she informed her name to me. She also informed me that her father was working in Bombay. She came to my father for the purpose of study. On 23d of March 2022 watchman of Mac House informed me over phone that police from Serampore women P.S. have arrested my father and had taken away to police station and I was asked to go to the police station. I went to police station during the night. I was informed by O.C. of Police station that my father was arrested on allegation of rape with that girl having very fair complexion. I had talked with my father when he confessed before me that he had sexual intercourse with the girl once. One day police came to my house, interrogated me and recorded my statement. The day was 4 of April 2022. I also made statement before the Ld. Magistrate once. I made statement and the same was recorded by the Ld. Magistrate. I also put my signature over my statement.”

33.1. PW 4 in his cross-examination stated that his date of birth is 05.06.2003 and his 15th birthday was celebrated by his father on 05.06.2018 at community Hall of Serampore College. After initiation of the case under Section 498A IPC his father used to reside at Mac house but his mother used to reside in staff quarters of Serampore college. His father had adopted sons and daughters. His father was running an institution like NGO in which he used to help financially backward children in their education. His father has a school at Shimla by the name of William Carey Memorial School. He knows that William Carey was the founder of Serampore College. After the lockdown he saw 3 to 4 girls in Mac house and the name of one of them was Lora who was adopted by his father.

33.2. From the evidence of PW 4 it appears that he loves his father very much. But unfortunately it is found from his deposition that after being

intimated by the watchman of Mac house on 23rd March, 2022 he went to Police Station during the night and he was informed by the OC of Police Station that his father was arrested on the allegation of rape with one girl having very fair complexion. He had talked with his father when he confessed before him that he had sexual intercourse with the girl once. Now if we see the deposition of PW 7, being the IO we shall find that **IO has stated PW 4 Augustine Digal has not stated before her that he had talked with his father at Police Station during that night when he confessed before him that he had sexual intercourse with the girl once.** Therefore, it appears that PW 4 has also made a serious improvement of the prosecution case against his own father who had a strained relation with his mother being PW 3.

34. PW 4 and PW 3 were claiming that after getting information from the watchman/darwan of Mac house, PW 4 had visited Serampore Police Station. Now let us examine the arrest memo of the appellant. It appears from the arrest memo dated 23.03.2022, there is no whisper that PW 4 Augustine Digal appeared as the close relative of the appellant before the Police Station or he was called by the OC. The relevant column of close relatives in the arrest memo remained vacant. If that be so, it is very difficult to believe that PW 4 actually visited the Serampore Police Station on 23.03.2022 to ascertain what happened to his father and his father confessed before him that he committed sexual intercourse with one girl whom he saw in the Mac house. Such extra judicial confession has no basis since there is no evidence to show that PW 4 had actually visited Serampore police Station on 23.03.2022 at the relevant point of time. Therefore, the

depositions of PW 3 and PW 4 do not inspire confidence and we cannot rely upon such evidence on the ground that the witnesses PW 3 and PW 4 appear to be tainted, biased and highly interested witnesses. Accordingly we reject their contention against the appellant who was a professor of Serampore College. The seizure lists prepared by IO were not proved in accordance with law. No local independent respectable witness was examined in support of the prosecution case. The medical evidence remained non-conclusive and the evidence of the victim and her elder sister are full of blemishes, anomalies and accordingly the deposition of the alleged victim girl cannot be accepted as gospel truth.

**Statements under Section 164 Cr.P.C.: Influence of the Police*

35. The record reveals that before the witnesses were produced before the learned Judicial Magistrate for recording their statements under section 164 Cr.P.C., they had visited the police station. PW 1, the victim girl, has stated before the Judicial Magistrate that she had come from the police station. PW 3 Rita Soren (Digal) has stated before the Judicial Magistrate that on that day she came to police station from her home, and thereafter from police station to the learned Court of Judicial Magistrate. Most interestingly, PW 4 Augustine Digal has stated in his cross examination that on 04.04.2022 he went to Court for making statement and on the same day he made statement before the I.O. PW 4 has further stated that he made statement before the I.O. prior to making statement before the learned Magistrate. The question arises whether the statements recorded by the Judicial Magistrate were free and fair.

**Statement under Section 313 Cr.P.C. : Appellant's Claim*

36. If we peruse the examination of the appellant under Section 313 Cr.P.C. we shall find that he has not only denied the prosecution case of rape/penetrative sexual assault but has also made certain allegations against the PWs. The prosecution has contended that the appellant admitted that he acted as a tutor of the victim. But that is also denied. The relevant question answers quoted herein below are essential for proper understanding of the defence.

“1.....
2.....
.....

4. *Victim Girl as PW -1 has further stated that after knowing about her you came to the church, had talk with her and thereafter approached her father. You told her father that you would keep her in your house and you will made arrangement for her education. Her father agreed to your proposal and you took her to your house at Mac House situated near the campus of Serampore College. In second week of March, 2022 she came to Mac House and she started residing in your house. What do you want to say?*

Ans.: *Entire statements are false. However, I admit her at National Institute of Open Schooling, New Delhi online.*

5. *PW-1 has further stated that you also used to reside in the said house and your niece Lora also used to reside with her. What do you want to say?*

Ans.: *I was residing in Mac House only with my niece Lora. No other person other than family members and relatives were allowed to reside with me according to college rules.*

6. *PW-1 has further deposed that after one week of her residing in your quarter you came from college in the afternoon and sat in the hall. At that time your niece Lora was not in the quarter and no other person was there and she was alone. You called her and asked her to sit beside*

you. Thereafter you made bad touches over her body, which did not look good to her. She became frightened and went inside the room. What do you want to say?

Ans. : *Everything is false. I never come from college to quarter for lunch. Instead I go to college with morning meal.*

7......

14. *Elder sister of victim girl is examined as PW 2, who has stated that she lodged complaint in connection with this case for her younger sister. She lodged complaint against you on 23.03.2022 before Serampore P.S. What do you want to say?*

Ans.: *It is true.*

17. *PW 2 has further stated that her younger sister was taken to school quarter, from there she made a call to her from mobile phone of one aunt and informed the incident to her. She identified you on dock. What do you want to say?*

Ans. *Completely false. On the day, VG arrived with her elder sister in 3rd week of March'22 within half an hour, I sent them to school premises being William Carey Memorial School, Shimla.*

19. *PW 2 has further stated that her sister informed about the incident of rape committed by you upon her and that if she would not be taken away from there, she would commit suicide. On the next day she went to Mac House with police for recovery of her sister and she could be able to recover her sister and she took her to an N.G.O. namely Sankalpo, What do you want to say?*

Ans. *I cannot say. It is false to say that VG was recovered from Mac House.*

21. PW-3 has further stated that in the month of August, 2021 she came to know from her son that you would bring some girls for their education. Subsequently three girls were brought and they used to reside in your quarter at Mac House. On 23.03.2022, darwan made a telephone call to them and informed that her husband has been arrested and taken away. Thereafter her son went to Serampore Women P.S. and found that you have been arrested in a rape case. Her son also came to know that one girl having white hairs and white colour has been raped. Her son had seen the said girl in your quarter. What do you want to say?

Ans. :Allegations are false. However, I cannot say about information given by darwan or not.

22. PW 4 Augustin Digal you son has deposed that he used to reside with his mother and used to visit you. What do you want to say?

Ans.: He never visited me since March, 2012 when case under Section 498 A IPC was registered against me.

.....
.....

26. PW 4 has further stated that about two weeks ago of institution of this case, i.e. in the month of March 2022 he had seen a girl in your quarter with very fair complexion. The said girl was aged about sixteen years. She informed him that her father was working in Bombay and she came to you for the purpose of study. What do you want to say?

Ans. Presence of girl in quarter is completely false. I cannot say what she stated to him.

.....
.....

28. PW 4 has further stated that he had talk with you, when you confessed before him that you had sexual intercourse with the girl once. What do you want to say?

Ans. Completely false allegation.

.....
.....

31. PW 6 Dr. Abhijit Roy deposed that on 27.03.2022 he examined you and found that there was nothing to suggest that you were incapable of performing sexual intercourse under normal condition. He proved your medico-legal examination report as Exhibit-8. What do you want to say?

Ans.: It is true. I am suffering from type I diabetes since childhood and as such I cannot ejaculate due to this reason.

.....
.....

34. PW 7 has further proved a seizure list dated 28.03.2022 as exhibit P 12, from which it appears that two bed sheets, one printed barmuda, six copies of passport size photographs of victim girl, one packet of super manforce condom and one packet contraceptive tablets and vitamis tablets were seized from you at your house being Mac House. What do you want to say?

Ans. I have no knowledge of the same.

35. Do you want to say something?

Ans.: These are totally false allegations against me to assassinate my character and create problem in my job and career. My wife is mastermind of allegation against me. I am innocent and I have been falsely implicated in this case. On the allegation of my wife, college formed fact finding committee, which did not find substance in allegations against me and my wife and her relatives have been removed from college quarter.

36. Do you want to adduce any evidence in support of your defence?

Ans. No Sir.”

From the above examination of the appellant under Section 313 Cr.P.C., it appears that the College Rules do not permit the appellant to keep in his quarter any person other than member of his family or his relatives. It is also found that he has specifically stated that his son never

visited him since March, 2012 after the case under Section 498 A IPC was registered against him. So far as seizure list dated 28.03.2022 is concerned, he had stated that he had no knowledge of the same. Lastly, he has categorically stated all allegations against him are false, and his wife (PW 3) is the mastermind of such allegations. He has further stated that the College Authority formed a fact finding committee on receipt of the complaint/allegations from his wife but the said committee did not find any substance in the allegations made against him, and PW 3 and her relatives were removed from the college quarter. Such statement goes to show the extent of animosity between the concerned persons and there are obvious reasons for not examining the college authorities or college records at the instance of the biased I.O. and Special Public Prosecutor which would, in all probability, go against the prosecution.

**Dissection on law points:-*

37. The learned counsel for the State has relied upon the judgment of **Sandip Das (supra)** wherein the Hon'ble Judge was pleased to observe that in a case involving sexual assault upon minors and that too by their private tutors, the Court is required to look into the evidence of the minor victim with utmost sensitivity. In my view the said case law is not applicable in this case, since the minor victims in that case were aged about 9 years but so far as this case is concerned the victim was aged about 16 years. It is also true that in the case at hand the appellant was not her private tutor. Admittedly, he arranged some educational facilities for the alleged victim girl. The evidence that the victim girl used to stay in the Mac house at Serampore

College is lacking. No respectable local witness was examined in support of such alleged stay of the victim in the Mac house. The prosecution relied upon the statement and deposition of the estranged wife and her son.

38. The learned counsel of the state has also relied upon another decision of ***K.P. Kirankumar alias Kiran(supra)*** in support of his contention that if the evidence of the prosecutrix inspires confidence it must be relied upon without seeking corroboration of her statement in material particulars. Needless to mention we have analysed the deposition of the victim girl in this case and we have found many anomalies and blemishes in her deposition and we are unable to accept the said testimony of the victim girl as gospel truth.

39. The learned Counsel of the de-facto complainant has relied upon 3 decisions. Firstly, ***Raju (supra)*** wherein Hon'ble Supreme Court has been pleased to discuss the observations made in ***Gurmit Singh (supra)*** case and thereafter was pleased to observe that ordinarily the evidence of prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. In our case, we have to say that the deposition of the victim girl is not reliable on several counts which we have already discussed and, therefore, in our view the above case law is not applicable in this case. The learned counsel has also drawn our attention to the case of ***State of Punjab vs. Gurmit Singh (supra)*** in support of his contention that the testimony of the victim of sexual assault is vital and unless there are compelling reasons the testimony of a victim of sexual assault alone is sufficient to convict an accused. We have already

mentioned that there are reasons for not relying upon the evidence of PW 1 in this case and we have also considered the other materials on record to draw support in favour of the testimony of the victim but that test has also failed. The case **of State of Maharashtra vs. Kewalchand Jain (supra)** is also relied upon wherein the Hon'ble Supreme Court has been pleased to lay down that ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of a violation, unless there are special circumstances which call for greater caution in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation. We have found that the sole testimony of the victim is not reliable. We have tried to scrutinise the evidence of PW 1 with the help of other prosecution evidence and materials but those materials on record have also failed to provide support to the allegation made by PW 1.

40. The learned counsel of the appellant has relied upon the decision in **State of UP and another vs. Jaggo @ Jagdish and Ors.** reported in **(1971) 2 SCC 42** in support of his contention. I have gone through the said judgment and found that the Hon'ble Apex Court has laid down that *".....it is true that all the witnesses of the prosecution need not be called but it is important to notice that the witness whose evidence is essential to the 'unfolding of the narrative' should be called....."*

It has already been discussed above that some vital witnesses were not examined and some were not cited as chargesheet witnesses. It is also found that even the vital seizure list witnesses were not summoned. The lady constable Nitu Bhakta Banerjee took an effective part in pursuing the

investigation but she was not even cited in the chargesheet as a witness. The seizure list witness Bandana Banerjee was also not cited. For the purpose of understanding the question raised by the learned Counsel of the appellant, I would like to depict who were cited as chargesheet witnesses as follows:

- i) Moumita Naskar D/o Hemanta Naskar (Defacto complainant)PW2
- ii) victim girl.....PW1
- iii) Sourav Dey s/o Shyamal Dey
- iv) Dhanpat Dugar s/o Lt. Manik Chandra Dugar
- v) Dongpang Alinger s/o Lt. Sosang Repba Alinger
- vi) Prem Chhetri S/o Lt. Gopal Chhetri
- vii) Rita Soren (Digal) PW3
- viii) Augustin Digal S/o Protap DigalPW4
- ix) LC/470 Moumita Dey of Serampore Women PS
- x) LC/2017 Mamoni Ghosh
- xii) Dr. Avhijit Roy , MO of Serampore Walsh HospitalPW6
- xiii) Nasrina Parveen Ld. J.M 2nd Court, Serampore Hooghly
- xiv) LSI Nibedita Koley of Serampore Women PS.....PW7

41. Out of the said 13 witnesses (charge-sheet shows there is a mistake in serial no. xi), it appears that only 6 witnesses were examined by the prosecution. Subsequently Dr. Partha Chatterjee was examined as PW 5 by virtue of an application under section 311 Cr. P.C filed by the Prosecution. The original record shows that the remaining witnesses were not summoned for the reasons best known to the concerned Special Public Prosecutor. For

the purposes of proper understanding of the matter in hand, I quote the relevant ordersheets from the original trial court record as follows:-

“Order No. 04 dated 19.11.2022

Sole accused namely Pratap Digal has been produced from correctional home. He is remanded to correctional home till 15.12.2022.

To date for production.

Ld. Special P.P.-in-charge is present with victim girl. Ld. Advocate for the accused is also present.

Victim girl is further examined in chief in full as PW-1. During her examination-in-chief, the statement of victim is marked as Exhibit-1 and her signatures on statement are marked as Exhibits 1/1, 1/2, 1/3 and 1/4.

She is cross-examined in part.

At this stage, Ld. Defence Lawyer files a petition praying for time of cross-examination of the victim girl on the ground stated therein.

The petition is taken up for hearing.

Heard both sides. Perused the petition.

Considered.

Ld. Lawyer for the accused submits that he has made attempt for visiting the place of occurrence but Serampore College authority did not allow him to make inspection of the place of occurrence and as such, he is unable to cross-examine the witness today.

Ld. Special P.P.-in-charge submits that the prosecution is duty bound to conclude the cross-examination even if he could not be able to inspect the place of occurrence.

This is a case under P.O.C.S.O. Act and it has time and again been directed by the Hon'ble Courts not to defer the evidence of prosecutrix on any ground.

Ld. Defence Lawyer expresses his inability to cross-examine the witness since it will prejudice the accused to a large extent. I am also of the view that there is no scope for the court to grant adjournment during cross-examination or examination of prosecutrix or the victim girl of a P.O.C.S.O. Case. As suggested by the Ld. Special P.P.-in-charge that an opportunity may be afforded to the accused so that his Ld. Lawyer may conclude the cross-examination of the victim girl on the next date positively. The petition for adjournment is allowed as last chance. The defence is directed to come ready on the date fixed to conclude the cross-examination of the witness, otherwise the cross-examination of the victim girl, being PW-1 shall be treated as closed.

At this stage, Ld. Lawyer for the accused produces a prisoner's petition sent from the prison being filed by the accused alleged to be received in this court on 27.07.2022 and he submits that the prisoner may be heard on this petition.

The petition is taken up for hearing.

Heard the accused and Ld. Special P.P.-in-charge.

Considered.

It is claimed in the petition that if the Ld. Special P.P.-in-charge, Sri Joydeep Mukherjee shall act as Special P.P.-in-charge in this case, the accused shall be highly prejudiced on the ground that the Ld. Special P.P.-in-charge is Advocate of his wife Rita Soren (Digal) since the year 2012, who has instituted a case under section 498A of I.P.C. against him. It has also been alleged that his wife and son are witnesses in this case and if the present Ld. Special P.P.-in-charge is not changed, then his chance of getting fair justice may be hampered.

On the other hand, the Ld. Special P.P.-in-charge submits that prosecution pleader cannot be changed at the whims of accused. He cannot claim that the public prosecutor should be removed, because he was lawyer of his wife. It is not a case that he was holding the brief of accused and now he is appearing as public prosecutor. So, the prisoner's petition should be rejected.

It is apparent from the prisoner's petition that the Ld. Special P.P.-in-charge appointed in this case namely Sri Joydeep Mukherjee has not acted as an Advocate of the accused at any time. It has also not been claimed that once he acted on behalf of accused and now he has appeared as public prosecutor to prosecute this case against the accused. A public prosecutor cannot be changed at the sweet will of accused. I am of the view that the instant petition is devoid of any merit and is liable to be rejected.

Hence, the instant petition filed on behalf of the accused is hereby rejected.

To date for further cross-examination of PW-1 as last chance.

D/C by me.

*Addi. Dist. & Sessions Judge,
1st Court, Serampore, Hooghly*

Order No.- 05 Dated 15.12.2022

Sole accused namely Pratap Digal has been produced from Correctional Home. He is remanded to Correctional Home till 17.02.2023.

Ld. Spcl. P.P. in-charge as well as Ld. Advocate for the accused persons are present.

Witness V.G. is present. Further cross-examination of P.W. -01 V.G. is resumed today. She is examined cross-in-full and discharged. Ld. Spcl. P.P. in-charge submit fixing another date for evidence of complainant.

The P.P. prayer is allowed.

Fix 17.02.2023 for evidence of complainant C.S.W. No. - 01. Issue summons. Prosecution to take steps.

Accused be produced from J.C.

*D/C by me.
Addi. Dist. & Sessions Judge,
1st Court, Serampore, Hooghly*

Order No.- 07 Dated 03.03.23

Sole accused namely Pratap Digal has been produced from Correctional Home.

He is remanded to Correctional Home till 03.04.2023.

Ld. Spcl. P.P. in-charge as well as Ld. Advocate for the accused persons are present.

Further examination in chief of P.W. -02 Moumita Naskar is resumed today. She is cross examined-in-full and discharged.

Written complaint, signature of witness on the seizure list dated 23.03.2022, signature of witness on the medico legal examination report dated 24.03.2022 and signature of witness on the seizure list dated 24.03.2022 are marked as exhibit P2, P3, P4, P5 respectively.

Ld. Spcl. P.P. in-charge submit fixing another date for evidence of C.S.W. No. -6,7 and 8&12. The P.P. prayer is allowed.

Fix 03.04.2023 for evidence of C.S.W. No. - 06 & 07.

Fix 04.04.2023 for evidence of C.S.W. No. 08 & 12.

Issue summons. Prosecution to take steps.

Accused be produced from J.C.

*D/C by me.
Addi. Dist. & Sessions Judge,
1st Court, Serampore, Hooghly*

Order No.- 08 Dated 03.04.23

Sole accused namely Pratap Digal has been produced from Correctional Home. He is remanded to Correctional Home till 04.04.2023.

Ld. Spcl. P.P. in-charge as well as Ld. Advocate for the accused persons are present.

No witness is turned-up.

It appears from the record that the summons was not issued upon the witness.

D.A. is directed to issue summons upon the witness.

Tomorrow for evidence.

Accused be produced from J.C.

*D/C by me.
Addi. Dist. & Sessions Judge,
1st Court, Serampore, Hooghly*

Order No.-09 dated 04.04.2023

Sole accused person is produced from Correctional Home.

He is remanded to Correctional Home till

Ld. Spcl. P.P. as well as Ld. Lawyer for the accused person are present.

Smt. Rita Soren (Digal) is examined as P.W. - 03 in full and cross examination in full and discharged.

Statement of witness Rita Soren (Digal) is marked as exhibit - P6 and the signatures of Smt. Rita Soren (Digal) in the statement are marked as exhibit P6/1, P6/2, P6/3 and P6/4 in favour of the prosecution.

No other witnesses are present today.

As such the case is adjourned.

Fix 03.05.2023 for evidence of C.S.W.-06.

Fix 04.05.2023 for evidence of C.S.W. - 08 & 12.

Prosecution to take steps. Issue summons at once.

To date also for production of the accused person.

Accused as before.

*D/C by me.
Addi. Dist. & Sessions Judge,
1st Court, Serampore, Hooghly*

Order No. 10 dtd. 03.05.2023

Sole accused person is produced from. J.C.

He is remanded to till J.C. 05.05.2023.

No witnesses are turned up. Hence the case is adj.

To date (04.05.2023) for further evidence.

Accused be produced from J.C.

*D/C by me.
Addi. Dist. & Sessions Judge,
1st Court, Serampore, Hooghly*

Order No. 11 dtd. 04.05.2023

Sole accused person is produced from. J.C.

He is remanded to till J.C. 15.06.2023.

one witness is present and examined on dock as p.w.4 and cross exm. in full and discharged. Documents are marked as exbt. 7/1to7/4 and 7. No witnesses are present. Hence the case is adj. Fix 15.06.2023 for evidence of C.S.W.12.

Fix 17.06.2023 for evidence of C.S.W.14

Prosecution to take steps. Issue summons at once.

To date also for production.

*D/C by me.
Addi. Dist. & Sessions Judge,
1st Court, Serampore, Hooghly*

Order No. -12 dated 15.06.2023

Sole accused person is produced from J.C.

He is remanded to J.C. till 17.06.2023.

Ld. lawyer of defence and Ld.p.p.in charge are present.

Ld. p.p. in-charge files a petition U/S 311 Crpc. praying for permit the prosecution to issue summons upon Sri Partha Chatterjee for adducing evidence. Perused the petn. Hd. Consider. Prayer is allowed.

Dr. Partha Chatterjee and Avijit Roy are present and examined on dock as P.W.05 and 06 in full and cross examined in full and discharge. Documents are marked as exbt 4/1 and 08 respectively. No other witnesses are present. Hence the case is adjourned.

To date (17.06.2023) for further evidence.

*D/C by me.
Addi. Dist. & Sessions Judge,
1st Court, Serampore, Hooghly*

Order No. 14 Dated-19.07.23

Sole accused person is produced from Correctional Home. He is remanded Correctional Home till 02.08.2023.

The P.P. in charge and Ld. Defense counsel are present.

I.O. L.S.I. Nibedita Koley is present. She is examined as P.W. 07 chief-in-full and in cross-examination in part and deffered as the prayer of Ld. Defence council on the ground stated there-in.

Heard.

Considered.

The prayer is allowed.

The receiving endorsement on written complaint, formal F.I.R., rough sketch map of P.O. with index, seizure list, seizure list dated 28.03.22, seizure list and seizure list are marked as Exhibit P2/ 1, P9, P10, P3/ 1, P12, P13 and P14.

Fix 02.08.2023 for further evidence of I.O.

Prosecution is directed to issue summons upon the witness and produce the alamat if any on the date fixed positively.

Accused be produced from J.C.

D/C by me.

*Addi. Dist. & Sessions Judge,
1st Court, Serampore, Hooghly*

Order No. 15 dated - 02.08.2023

Sole accused person is produced from Correctional Home. He is remanded to correctional home till 24.08.2023.

Ld. P.P. in-charge and Ld. defence council are present.

No witness is turned-up.

Hence the case is adjourned.

Fix 24.08.2023 for further evidence of I.O. and production of the accused.

Issue summon accordingly.

D/C by me.

*Addi. Dist. & Sessions Judge,
1st Court, Serampore, Hooghly*

Order No. 16 Dated 24.08.23

Sole accused namely Pratap Digal has been produced from Correctional Home. He is remanded to Correctional Home till 22.09.2023.

Ld. Spcl. P.P. in-charge as well as Ld. Advocate for the accused persons are present.

Further cross-examination in chief of P.W. -07 Nibedita Koley is resumed today. She is examined cross-in-full and discharged.

Ld. Spcl. P.P. in-charge submit prosecution evidence is closed. Let the prosecution be closed.

Fix 22.09.2023 for examination of the accused person U/S-313 of Cr.P.C.

Accused be produced from J.C.

D/C by me.
Addi. Dist. & Sessions Judge,
1st Court, Serampore, Hooghly

Order No.- 17 Dated 22.09.23

Sole accused namely Pratap Digal has been produced from Correctional Home. He is remanded to Correctional Home till 05.10.2023.

Ld. Spcl. P.P. in-charge as well as Ld. Advocate for the accused persons are present.

Accused is examined U/S 313 of Cr.P.C. in separate sheets. Let it be kept with the record.

Fix 05.10.2023 for argument. Accused be produced from J.C

D/C by me.
Addi. Dist. & Sessions Judge,
1st Court, Serampore, Hooghly.

42. From the above orders it transpires that out of 13 chargesheet witnesses only CSW No. 1 Moumita Naskar (PW 2), CSW No. 2 the victim girl (PW 1), CSW No. 7 Rita Soren (Digal) (PW 3), CSW No. 8 Augustine Digal (PW 4), CSW No. 12 Dr. Avhijit Roy (PW 6), CSW No. 14 LSI Nibedita Koley (PW 7) have been examined. PW 5 Dr. Partha Chatterjee who was not cited as a chargesheet witness was summoned under Section 311 Cr.P.C. by order no. 12 dated 15.06.2023 and on the same day Dr. Partha Chatterjee alongwith Dr. Avhijit Roy were produced before the Trial Court and they were examined and cross-examined in full.

43. It appears from the record that CSW No. 3 Sourav Dey, CSW No. 4 Dhanpad Dugar, CSW No. 9 LC 470 Moumita Dey, CSW No. 10 Mamoni Ghosh, CSW No. 13 Nasrina Parveen, learned Judicial Magistrate, 2nd Court, Serampore were not even summoned. Therefore, summons were issued only

upon CSW No. 1 Moumita Naskar, CSW No. 2 the victim girl, CSW No. 6 Prem Chettri, CSW No. 7 Rita Soren (Digal), CSW No. 8 Augustine Digal, CSW No. 14 LSI Nibedita Koley being the IO of the case. It appears that although summons were issued CSW 6, Prem Chettri, no observation is made in the ordersheets as to the fate of such witness summons upon the said witness Prem Chettri who was shown as the security guard of Mac house.

44. The learned Trial Judge in his judgment has made an observation in para 33 of the judgment which is quoted hereinbelow:

“33. Ld. Defence Counsel further argued that darwan of Mac House is a vital witness who has been withheld by the prosecution. According to PW-3, darwan gave information about arrest of accused from Mac House. If victim girl resided there, he must have seen her and he must have deposed regarding residing of victim girl in Mac House. He further argued that he tried to obtain whereabouts of darwan of Mac House who has been made witness No. 05 in the charge sheet, by issuing an R.T.I. application before Serampore College. But it has been informed from the reply of Principal that there is no employee by the name of Prem Kumar Chhetri serving and residing in the college. Though the reply of Serampore College has not been proved before the Court, yet it does not disclose that Prem Kumar Chhetri never worked in the Serampore College as a darwan or security. Ld. Special P.P.-in-charge submitted that summons was issued against C.S.W. No. 05 but his attendance could not be secured because he left the job and went away. The evidence of darwan or security of Mac House would have been a vital corroborative witness in this case but it appears that his attendance could not be secured. However, due to this fault the prosecution case cannot be thrown out. In catena of decisions, the Hon'ble Supreme Court has held that even a single witness is sufficient to prove the guilt of accused if the evidence of witness is reliable and convincing. Moreover, the defence could have examined said darwan to establish his case that victim girl never resided in his quarter situated at Mac House.”

45. From the above it is clear that although the learned Trial Judge did not mention in his ordersheet about the fate of the summons issued upon CSW No. 6 Prem Chettri, he has made elaborate discussion on RTI application and its reply without the same being exhibited in the Trial Court record. The learned Trial Judge has also relied upon the submission from the Bar, that is, from the learned Special Public Prosecutor that the attendance of CSW 5 could not be secured because he left the job and went away. How could a Trial Judge rely upon such un-exhibited documents and submission from the Bar? From the record it is revealed that CSW 5 Dongpang Alengar was not even summoned, then, how the learned Trial Court had come to the conclusion that CSW 5 had left the service.

**Failure to prove foundational facts: causes:-*

46. All the time, it is seen, the learned Trial Judge has commented that all the defects in the prosecution case, as disclosed by the defence, are minor defects and that should be ignored. But after going through the record we have found that the defects in proving the foundational facts are enormous.

Firstly, *the prosecution has failed to prove the presence of the victim girl at Mac House at the relevant point of time by independent evidence. Even the admitted entry register of Mac House was not seized.*

Secondly, *the seizure list dated 23.03.2022 of wearing apparels of the victim allegedly from the quarters of the appellant is doubtful, since no local respectable witness was cited or examined.*

Thirdly, apart from *de facto* complainant, CSW 3, Sourav Dey was not summoned to appear during trial. Moreover, another witness to such seizure namely LC 1570 Nitu Bhakta Banerjee was not even cited as a chargesheet witness.

Fourthly, the victim's allegation that she was kept in confinement in Mac house contradicts her own deposition as well as the deposition of PW 2. Although the PW2 claimed that she recovered the victim from Mac House with the help of the Police, the IO denied such narratives of the PW2.

Fifthly, prosecution's excessive reliance upon the estranged wife and son of the appellant who appear to be biased.

Sixthly, the prosecution against the appellant was conducted by the learned Counsel of the estranged wife who represented her in the relevant 498A IPC proceeding.

Seventhly, non- conclusiveness of the medical report. No injury on private parts, vaginal wall or other portion of the body of the VG excepting an old tear on hymen (healed). No DNA Test was done as mandatorily required under Section 164A of Cr.P.C.

Eighthly, in spite of the collection of vaginal swabs of the victim girl the same was not sent for forensic examination.

Ninthly, seizure list dated 28.03.2022 is also doubtful since no disclosure statement under Section 27 of the Evidence Act was proved by the prosecution, although the items were allegedly recovered on the leading statement of the appellant.

Tenthly, the seizure lists dated 23.03.2022 and 28.03.2022 were not

proved by producing the seizure list witnesses excepting the de facto complainant in respect of the first seizure list.

Eleventhly, *non-production of wearing apparels of the victim and the appellant, bed sheets, Bermuda, contraceptive tablets etc. at the time of trial, particularly, when seizure of such articles was doubtful.*

Twelfthly, *the prosecution's failure to prove the alleged extra judicial confession of the appellant before the PW 4 Augustin Digal.*

Thirteenthly, *the prosecution's failure to show that the victim girl's evidence was free from blemishes and untrustworthiness.*

** Prosecutorial Bias: A hindrance to fair trial :*

47. It is unfortunate that although there was a prayer from the appellant/convict that if the learned Counsel Mr. Joydeep Mukherjee who represented his wife in the 498-A IPC proceeding was allowed to act as a Special Public Prosecutor, there is least chance of his success in the present proceeding, the same was not taken into consideration by the learned Trial Judge. It is found from the materials on record that PW 3 Rita Soren and PW 4 Augustin Digal were projected as star witnesses. The record further shows that the learned Counsel of Rita Soren (Digal) in the 498A IPC proceeding was allowed to conduct the prosecution as a Special Public Prosecutor in spite of stiff resistance from the side of the appellant/convict who himself wrote a letter from the Correctional Home at the appropriate time. **Was it a fair trial given to an accused who was an academician and was running an NGO for the betterment of children?** It is a cardinal

principle of law that justice should not only be done but, it must appear to have been done. The learned Trial Judge has failed to consider this basic principle of law. It is true that order 4 dated 19.11.2022 in connection with the relevant proceeding, i.e. ST(P) 24(08)/2022, was not challenged in the Higher Court but it is apparent that a serious miscarriage of justice has occasioned and the learned Trial Judge had allowed such miscarriage of justice to be continued against the appellant. **We are really very much disappointed.**

**Impartiality of the Prosecution is at stake :*

48. It is incomprehensible that how a learned advocate who appeared in a proceeding against the appellant on behalf of Rita Soren (Digal) could be again appointed as the Special Public Prosecutor to prosecute the appellant. May be the appointing authority was unaware of such fact but when the point was brought to the attention of the learned Trial Judge, the learned counsel should have been asked to recuse from proceeding against the appellant. In other words, the learned Counsel Mr. Joydeep Mukherjee should have withdrawn or recused himself from proceeding with the case. But that was not done here. Mr. Joydeep Mukherjee has also misused his power as a learned special public prosecutor since he did not even summon the vital witnesses. He had relied upon his client Rita Soren (Digal) and her son Augustine Digal to frame the appellant who was a Professor in Serampore College and was in custody for more than 4 years, and the learned trial judge has, without appreciating that the foundational facts have not been proved beyond reasonable doubt, held that it was the duty of

the appellant/convict to rebut the presumption under Section 29 of the POCSO Act. The claim of the learned Counsel for the appellant, maintained from the very beginning, that the investigation and prosecution are entirely planted, cannot be said to be overstated.

49. It is also found from the records that the appellant was all along claiming that this case was the brainchild of his wife and son, and the fact of appointment of the learned counsel Mr. Joydeep Mukherjee who represented Rita Soren (Digal) in her case under Section 498 A IPC against the present appellant, to act as special public prosecutor, actually, lends credence to such claim of the appellant.

50. The facts presented above raise serious doubts about the prosecution's impartiality and the appellant's right to a fair trial under **Article 21 of the Constitution**. In India's legal system, a Public Prosecutor is an officer of the court—not a spokesperson for the complainant. His/her duty is to seek justice, not just a conviction.

51. By appointing a Special Public Prosecutor who previously represented the wife, an important witness in this case, being a complainant in a hostile 498A IPC case against the same accused, a clear risk of bias was created. Because this prosecutor is now tasked with questioning the wife as a 'star witness,' his professional interests are naturally tied to her success. Under the 'Independent Officer' rule and precedents like ***Mukul Dalal v. Union of India*** reported in **(1988) 3 SCC 144** a prosecutor must remain detached. If an accused has a legitimate reason to fear that the prosecutor is not neutral, the fairness of the entire trial is compromised.

*Misapplication of statutory presumptions:-

52. As the order of conviction, which we have already discussed, rests primarily on the presumption under Section 29 of the POCSO Act, the following legal aspects are paramount for our consideration. While Section 29 creates a "presumption of guilt," it is a rebuttable presumption. The Supreme Court has clarified (notably in provisions regarding reverse burden) that the prosecution must first prove the "foundational facts" beyond reasonable doubt before the presumption kicks in. As the victim's testimony is full of anomalies and the only supporting evidence comes from "star witnesses" with a documented vendetta (the 498A case), the foundational facts themselves are shaky. A presumption cannot be used to fill a gap left by unreliable or coached evidence. Moreover, the fact that the appellant is a professor suggests that the collateral damage to his reputation and career is irreversible. If the Special Public Prosecutor—acting with a pre-existing antagonistic interest—pushed for a conviction based on a presumption while knowing the evidence was weak, it elevates "professional misconduct" to a malicious prosecution. The conduct of the Special Public Prosecutor in pursuing a conviction despite the apparent conflict of interest has contributed to a grave miscarriage of justice, resulting in the four-year incarceration of an academician.

The combination of a "reverse burden" statute (Section 29) and an "interested" prosecutor is a dangerous mix for civil liberties. We find that the conduct of the Special Public Prosecutor, Mr. Joydeep Mukherjee, amounts to serious professional misconduct. By prosecuting the appellant with malice and vindictiveness, he has acted in total violation of professional ethics. Accordingly, **we direct the Chairman of the Bar Council of West Bengal to immediately consider initiating disciplinary proceedings against him. The Director, Directorate of Prosecution be also notified.**

If disciplinary proceeding is initiated against Mr. Joydeep Mukherjee, the Bar Council of West Bengal shall ensure that the appellant is given a full and fair opportunity to depose and produce evidence regarding the conduct of the prosecutor, as the appellant is the primary person whose liberty and reputation were compromised by the aforesaid conflict of interest.

To "complete the ends of justice," the Bar Council must treat the appellant as an essential party to the inquiry. Considering that he has spent four years in custody, his testimony regarding how the prosecution was conducted is the "best evidence" of whether the Special Public Prosecutor acted with a biased or antagonistic mind. , and shall ensure that the appellant is given a full and fair opportunity to depose and produce evidence regarding the conduct of the prosecutor, as the appellant is the primary person whose liberty and reputation were compromised by the said conflict of interest.

SECTION- IV

The Closing Chapters:

Chapter I - the end results:-

53. Considering all aspects of the matter, we have found that the foundational facts as required to be proved by the prosecution have not been established and, therefore, there is no question of raising presumption under Section 29 of POCSO Act.

54. The cross-examination of prosecution witnesses have clearly demolished the prosecution case which is based on unreliable testimonies of the victim girl, her elder sister and also upon the biased deposition of the estranged wife of the appellant and her son. The prosecution has failed to cite important witnesses to strengthen its case. The vital witnesses were not even summoned. The seizure lists were not proved in accordance with law. No disclosure statement under Section 27 of the Evidence Act, as discussed above, was produced. The medical report appears to be non-conclusive. Vaginal swabs collected but not sent for chemical examination. The PWS 3 & 4 admitted that on the day of recording the statement under section 164 Cr.P.C., they came from the police station. The investigation made by the IO SI Nibedita Koley is perfunctory, biased and unreliable on several counts.

55. In view of the above, we are inclined to set aside the judgment of conviction dated 19.07.2024 and order of sentence dated 20.07.2024 passed by the learned Additional Special Court-cum-Additional Sessions Judge, 1. Court, Serampore in ST(P) 24(08)/2022 corresponding to regular case

Special (P) 04 of 2022 arising out of Serampore Women P.S. case No. 12 of 2022 dated 23. 03. 2022 under Sections 376 (2)(f) /328/506 IPC and under Section 6 of POCSO Act and accordingly we do so.

56. The impugned judgment is hereby set aside. The appellant Pratap Digal be acquitted from charges under Sections 376 (2)(f) IPC and also under Section 6 of POCSO Act. The appellant be set at liberty at once, and be released from the custody, if not wanted in any other case.

57. The instant appeal being **CRA (DB) 25 of 2025** with connected applications, if any, is hereby disposed of.

58. The Trial Court Record be sent down immediately.

Chapter II- Directions and recommendations:

59. Before concluding, we must express our profound dismay at the investigation conducted by S.I. Nibedita Koley. Her handling of these grave charges—under Sections 376(2)(f), 328, and 506 of the IPC and Section 6 of the POCSO Act—reveals a total ignorance of basic investigative protocols. While children are indeed '**supremely important national assets,**' the stringent provisions of the POCSO Act cannot be weaponized to settle personal scores.

60. The Investigating Officer (IO) failed to take even rudimentary steps to verify the allegations against Professor Pratap Digal. Instead, she allowed herself to be swayed by biased and unreliable witnesses, completely ignoring neutral local residents. Most glaringly, a vaginal swab was collected but never sent for forensic examination, and key witnesses were omitted from

the chargesheet. Such incompetence puts innocent lives at risk. Consequently, **we direct the Director General of Police, West Bengal, to immediately consider initiating disciplinary proceedings against S.I. Nibedita Koley in the light of the observations in this judgment and order. A compliance report must be submitted to the Registrar General of the High Court, Calcutta, within 15 days of receiving this judgment.**

Findings on Wrongful Incarceration and Professional Misconduct

61. The evidence unequivocally demonstrates that Professor Pratap Digal has endured over four years of wrongful incarceration. This prolonged deprivation of liberty was directly precipitated by the gross incompetence of the Investigating Officer, S.I. Nibedita Koley, and the antagonistic, ethically deficient conduct of the Special Public Prosecutor, Joydeep Mukherjee.

This illegal detention was entirely avoidable. Had the State's officers acted with basic professional diligence at the inception of the proceedings, this miscarriage of justice would not have occurred. The profound agony, personal suffering, and irreparable damage to appellant's reputation cannot be fully mitigated; however, the State must remain accountable for the systemic failures of its functionaries.

62. Accordingly, the Court issues the following directions:

Firstly, Compensation: The Learned Legal Remembrancer and the Principal Secretary to the Government of West Bengal (Judicial Department) are directed to remit **Rs. 10 Lakhs** to appellant's account within **three months** of this judgment.

Secondly, Recovery of Funds: The Government of West Bengal is granted the liberty to recover the compensation amount from the delinquent officials—S.I. Nibedita Koley and Joydeep Mukherjee—in accordance with the law.

Moreover, the appellant is given liberty to take appropriate legal measures against PW 3 and PW 4 for appropriate damages in accordance with law.

Recovery of Compensation in Cases of False Allegations

63. Under Section 9(5) of the **National Legal Services Authority's (NALSA) Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes (2018)**, the State Legal Services Authority is empowered to initiate recovery proceedings if a trial or appellate court finds that the underlying criminal complaint was false. The provision states:

"(5) In case trial/appellate court gives findings that the criminal complaint and the allegation were false, then Legal Services Authority may initiate proceedings for recovery of compensation... before the Trial Court for its recovery as if it were a fine."

Policy Recommendation: Preventing the Misuse of Victim Compensation

64. While the Victim Compensation Scheme is a noble instrument for rehabilitation, the Court observes a concerning trend where the prospect of

financial gain incentivizes unscrupulous individuals to lodge false complaints. To balance the necessity of victim support with the protection of innocent citizens, a more rigorous disbursement structure is required.

65. The Court proposes the following framework:

1. **Interim Payment:** An initial disbursement of **25%** of the compensation amount.
2. **Escrow of Remainder:** The remaining **75%** shall be deposited into an interest-bearing account in the name of the victim (or next of kin) upon conviction at the trial level.
3. **Final Release:** These funds shall remain subject to the final adjudication of the appeal.

By implementing this staged disbursement, the temptation to file fraudulent cases can be significantly curtailed. The **Principal Secretary, Government of West Bengal, Judicial Department**, is requested to advise the relevant government departments on this matter, and the **Secretary of the West Bengal State Legal Services Authority** is directed to review these recommendations for implementation.

66. The Registrar General of the High Court at Calcutta is requested to send a copy of this judgment of this Court to the concerned **Director General of Police of West Bengal** immediately with a request to obtain a compliance report from him within 15 days.

67. The learned Registrar General, High Court at Calcutta is also requested to send a copy of this judgment to **the learned Chairman of West Bengal Bar Council** for his information and necessary action in the light of paragraph nos. 47 to 52.

The learned Registrar General, High Court at Calcutta is also requested to send a copy of this judgment to **the Legal Remembrancer, Government of West Bengal** and also a copy to **the Principal Secretary to the Government of West Bengal, Judicial Department** for information and necessary action. **The Director, Directorate of Prosecution be also notified.**

68. The Registrar General, High Court at Calcutta is also requested to send a copy of this judgment to **the Secretary, West Bengal State Legal Services Authority for information and necessary action.**

69. A copy of the judgment be also sent to the **learned District Judge, Hooghly, and the District Magistrate, Hooghly** for information and necessary action.

70. A copy of the judgment be also sent to the Superintendent of the concerned Correctional Home for immediate release of the appellant, if not wanted in any other case.

71. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

I Agree.

(APURBA SINHA RAY, J.)

(ARIJIT BANERJEE, J.)